

IN THE MATTER OF	*	BEFORE THE
STEPHEN J. BLACK	*	COMMISSIONER OF
	*	FINANCIAL REGULATION
RESPONDENT	*	OAH NO.: DLR-CFR-76A-08-41418
		DLR NO: DFR-EU-2008-081

The Proposed Decision of the Administrative Law Judge in the captioned case having been considered in its entirety, it is, by the Commissioner of Financial Regulation (the "Commissioner") this 13<sup>th</sup> day of October, 2009,

A. That the Findings of Fact in the Proposed Decision be, and hereby are,

B. That the Conclusions of Law in the Proposed Decision be, and hereby are,

C. That the Recommended Order in the Proposed Decision be, and hereby is

**ORDERED** that the Licensee's mortgage loan originator license be, and hereby

**ORDERED** that Respondent shall pay the amount of \$13,515.00 in restitution to

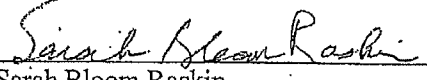
██████████ within sixty (60) days from the date that this Order becomes a final decision of the Commissioner. Respondent shall provide evidence of the restitution payment by sending the front and back of the cancelled check (payable to ██████████) to the Commissioner within fifteen (15) days from the date of the payment. Respondent

shall send proof of payment to: Commissioner of Financial Regulation, 500 North Calvert Street, Suite 402, Baltimore, Maryland 21202, Attn: Suzanne Elbon, Administrator.

Pursuant to Maryland Code Ann., State Government § 10-220, the Commissioner states that the reason for modifying the Recommended Order is to require Respondent to send to the Commissioner proof making the required restitution payment to [REDACTED].

Pursuant to COMAR 09.01.03.09, Respondent has the right to file exceptions to the Proposed Order and present arguments to the Commissioner. Applicant has twenty (20) days from the postmark date of this Proposed Order to file exceptions with the Commissioner. COMAR 09.01.03.09A(1). The date of filing exceptions with the Commissioner is the date of personal delivery to the Commissioner or the postmark date on mailed exceptions. COMAR 09.01.03.09A(2).

Unless written exceptions are filed within the twenty (20)-day deadline noted above, this Order shall be deemed to be the final decision of the Commissioner.

  
Sarah Bloom Raskin  
Commissioner of Financial Regulation

IN THE MATTER OF

STEPHEN J. BLACK

RESPONDENT

LICENSE NO: 26-13315

\* BEFORE EILEEN C. SWEENEY  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE OF  
\* ADMINISTRATIVE HEARINGS  
\* OAH NO.: DLR-CFR-76A-08-41418  
\* CFR FILE NO: DFR-EU-2008-081

\* \* \* \* \*

PROPOSED DECISION

STATEMENT OF THE CASE  
ISSUE

SUMMARY OF THE EVIDENCE

FINDINGS OF FACT

DISCUSSION

CONCLUSIONS OF LAW

RECOMMENDED ORDER

STATEMENT OF THE CASE

On October 22, 2008, the Deputy Commissioner of Financial Regulation (CFR) issued a charge letter to the Respondent, charging him with violation of the section 11-615(a)(5) of the Financial Institutions Article of the Annotated Code of Maryland (Supp. 2008). On October 29, 2008, the CFR delegated this matter to the Office of Administrative Hearings (OAH) to issue proposed findings of fact and conclusions of law, and a recommended order. Md. Code Ann., State Gov't § 10-205 (Supp. 2008)

I held a hearing on April 21, 2009 at the OAH in Hunt Valley, Maryland, on behalf of the CFR. Md. Code Ann., Fin. Inst. §§ 2-115(b) and 11-616 (2003 & Supp. 2008); Md. Code Ann., State Gov't § 10-205. Matthew A. Lawrence, Assistant Attorney General, represented the CFR. The Respondent represented himself.

The provisions of the Administrative Procedure Act, the hearing regulations of the Department of Labor, Licensing and Regulation, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2004 & Supp. 2008); Code of Maryland Regulations (COMAR) 09.01.03; and COMAR 28.02.01.

### ISSUE

Did the Respondent violate section 11-615(a)(5) of the Financial Institutions Article and if so, what is the appropriate sanction?

### SUMMARY OF THE EVIDENCE

#### Exhibits

The CFR submitted the following exhibits that I admitted into evidence:

- |             |  |
|-------------|--|
| CFR Ex. # 1 | October 22, 2008 charge letter from the CFR to the Respondent  |
| CFR Ex. # 2 | April 21, 2009 printout of the Respondent's licensing information  |
| CFR Ex. # 3 | April 9, 2008 Investigation Report   |
| CFR Ex. # 4 | March 27, 2008 letter from [REDACTED] to Stephen Prozeralik, received by the CFR on April 1, 2008  |
| CFR Ex. # 5 | February 20, 2008 Settlement Statement; February 11, 2008 Mortgage Broker Business Contract; January 28, 2008 Maryland Financing Agreement; January 25, 2008 Uniform Residential Loan Application; February 11, 2008 Good Faith Estimate; February 11, 2008 Truth In Lending Disclosure Statement  |
| CFR Ex. # 6 | February 27, 2008 Deposit Slip for [REDACTED], showing a deposit of \$1,821.29 less cash in the amount of \$662.00; the following cancelled checks from [REDACTED] to the Respondent, with handwritten notations: <ul style="list-style-type: none"><li>- January 26, 2008: \$225.00</li><li>- January 28, 2008: \$675.00</li><li>- February 1, 2008: \$3,200.00</li><li>- February 6, 2008: \$2,250.00</li><li>- February 8, 2008: \$2,842.00</li><li>- February 14, 2008: \$375.00</li></ul> |

- February 21, 2008: \$750.00
- February 28, 2008: \$500.00
- March 10, 2008: \$1,050.00
- March 11, 2008: \$2,060.00

The Respondent submitted the following exhibits that I admitted into evidence:

Resp. Ex. # 1      April 7, 2009 Motion To Amend Divorce Decree and Civil-Domestic Case Information Report, Circuit Court for Anne Arundel County, Case No.: [REDACTED]

Resp. Ex. # 2      July 13, 2009 Judgment of Absolute Divorce, Circuit Court for Anne Arundel County, Case No.: [REDACTED]

Resp. Ex. # 3      Pay stub from Elite Marketing & Productions, Inc. – The Baltimore Sun, for the week ending April 6, 2009

Resp. Ex. # 4      The following Moneygram Payment Systems, Inc. Drawer receipts and Money Order Receipts for payments to [REDACTED]:

- July 22, 2008: \$15.00
- July 26, 2008: \$15.00
- August 6, 2008: \$15.00
- September 3, 2008: \$10.00
- September 15, 2008: \$40.00
- September 15, 2008: \$16.00
- October 20, 2008: \$11.00
- October 27, 2008: \$45.00
- November 3, 2008: [amount illegible]
- November 10, 2008: \$40.00
- November 13, 2008: \$45.00
- December 10, 2008: \$20.00
- December 31, 2008: \$25.00
- January 7, 2009: \$50.00
- March 26, 2009: \$15.00
- April 14, 2009: \$50.00

Resp. Ex. # 5      The following handwritten and Moneygram receipts for payments to [REDACTED]:

- March 30, 2009: \$140.00
- April 6, 2009: \$180.00
- April 6, 2009: \$150.00
- April 13, 2009: \$100.00

### Testimony

The CFR did not present any witnesses. The Respondent testified on his own behalf.

### PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:<sup>1</sup>

1. At all relevant times, the Respondent was licensed by the Department of Labor, Licensing and Regulation (DLLR) as a mortgage originator<sup>2</sup> (license no.: 26-13315).
2. At all relevant times, the Respondent was employed by Horizon Title & Financial Corporation.
3. In his capacity as a mortgage originator, the Respondent assisted [REDACTED] in obtaining re-financing of the mortgage for her condominium located at [REDACTED].

<sup>1</sup> The Respondent stipulated to the facts set forth in Findings of Fact Nos. 2-8, as set forth in paragraph two of the CFR's October 22, 2008 charge letter.

<sup>2</sup> "Mortgage originator" is defined as a person who:

- (i) Is an employee of a mortgage lender that:
  1. Is a mortgage broker as defined in §§ 11-501(h) of this title; or
  2. Has or will have a net branch office at or out of which the individual works or will work;
- (ii) Directly contacts prospective borrowers for the purpose of negotiating with or advising the prospective borrowers regarding mortgage loan terms and availability;
- (iii) Receives from the mortgage lender compensation that is calculated:
  1. As a percentage of the principal amount of mortgage loans originated by the individual; or
  2. As a percentage of the interest, fees, and charges received by the mortgage lender that result from mortgage loan transactions originated by the individual; and
- (iv) Is authorized to accept a loan application on behalf of the mortgage lender.

Md. Code Ann., Fin. Inst. § 11-601(k)(1) (Supp. 2008).

"Mortgage lender" is defined as "a person that is licensed as a mortgage lender under Subtitle 5 of this title." Md. Code Ann., Fin. Inst. § 11-601(h) (Supp. 2008). Section 11-501(h) defines "mortgage broker" as a person who:

- (1) For a fee or other valuable consideration, whether received directly or indirectly, aids or assists a borrower in obtaining a mortgage loan; and
- (2) Is not named as a lender in the agreement, note, deed of trust, or other evidence of indebtedness.

Md. Code Ann., Fin. Inst. § 11-501(h) (Supp. 2008).

Unit 204, Glen Burnie, Maryland 21060.

4. [REDACTED] was fifty-nine years old, hearing impaired, and of limited mental capacity.
5. The Respondent was aware of [REDACTED] disabilities.
6. After completing the re-financing transaction, the Respondent used his position to convince [REDACTED] to lend him money.
7. From the period of January 26, 2008 to March 11, 2008, [REDACTED] wrote checks to the Respondent totaling \$13,927.00<sup>3</sup>
8. The Respondent promised to repay [REDACTED] by June 30, 2008 with an anticipated tax refund, but failed to do so.
9. On April 1, 2008, the CFR received a report of the Respondent's conduct and initiated an investigation.
10. On or before April 15, 2008, [REDACTED] attempted to obtain a Confessed Judgment Note from the Respondent for the debt; however, he refused to sign it.
11. On December 2, 2008, the CFR issued a charge letter to the Respondent.
12. The Respondent made payments to [REDACTED] of at least \$412.00 during the period of July 22, 2008 to April 14, 2008.<sup>4</sup>

<sup>3</sup> I note that CFR Ex. # 6 includes an unexplained February 27, 2008 Deposit Slip for [REDACTED], showing a deposit of \$1,821.29 less cash in the amount of \$662.00 and that the charge letter does not appear to include that cash amount.

<sup>4</sup> One of the receipts submitted by the Respondent into evidence was illegible.

## DISCUSSION

### Violation

The CFR alleged that the Respondent violated section 11-615(a)(5) of the Financial Institutions Article.

The Respondent stipulated that in February 2008, he acted as a mortgage originator for [REDACTED], a fifty-nine-year-old hearing impaired woman with limited mental capacity, to obtain re-financing of the mortgage for her condominium. He further stipulated that after completing the re-financing transaction, he used his position to convince [REDACTED] to lend him \$13,927.00 during the period of January 26, 2008 to March 11, 2008 and that he failed to pay her back by June 20, 2008, as promised.

At the time of these incidents, section 11-615(a)(5) provided in relevant part as follows:

(a) *Violations.* -- Subject to the hearing provisions of § 11-616 of this subtitle, the Commissioner may suspend or revoke the license of any licensee if the Licensee:

(5) Otherwise demonstrates unworthiness, bad faith, dishonesty, or any other quality that indicates that the business of the licensee has not been or will not be conducted honestly.

Md. Code Ann. Fin. Inst. § 11-615(a)(5) (Supp. 2008).

Clearly, by using his position as a mortgage originator and his access to financial information to convince a client with physical and mental disabilities to lend him money and by failing to repay her as agreed, the Respondent demonstrated unworthiness, bad faith, and dishonesty and that his business had not been conducted honestly, in violation of section 11-615(a)(5) of the Financial Institutions Article.



### Sanction

Pursuant to section 11-615 of the Financial Institutions Article, the CFR may suspend or revoke the Respondent's mortgage originator license; order the Respondent to cease and desist; order him to pay restitution for any person aggrieved by his conduct; and impose a monetary penalty. Md. Code Ann. Fin. Inst. § 11-615(a) and (c) (Supp. 2008).

The CFR did not make a recommendation at the hearing with regard to penalty. The Respondent appeared genuinely remorseful for his actions and explained that he was going through personal and financial difficulties, including a divorce and eviction, at the time he borrowed the money from [REDACTED]. He testified that he has been making payments to her since January 26, 2008, when he could afford to do so. (The Respondent's exhibits indicate that he had paid at least \$412.00 as of the date of the hearing.) Nonetheless, the evidence shows that the Respondent used his position to take advantage of a vulnerable individual who apparently placed her trust in him. His conduct raises grave concerns about his dealings with the public in the future should he continue to be licensed as a mortgage originator. Thus, revocation of the Respondent's license would be appropriate and I recommend that the CFR impose such a sanction. In addition, it is appropriate for the CFR to order the Respondent to make restitution to [REDACTED] for the balance on the debt owed to her. In light of the Respondent's attempts to repay [REDACTED] since July 26, 2008 and his current financial situation, a civil penalty would serve no purpose.

PROPOSED CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Respondent violated § 11-615(a)(5) of the Financial Institutions Article. Md. Code Ann. Fin. Inst. § 11-615(a)(5) (Supp. 2008). I further conclude the Respondent's action of using his position as a mortgage originator and his access to financial information to convince a client with physical and mental disabilities to lend him money and failing to repay her as agreed, warrants a revocation of his Mortgage Lender's license and an order of restitution for the balance owed on the debt to the client. Md. Code Ann. Fin. Inst. § 11-615(a) and (c) (Supp. 2008).

RECOMMENDED ORDER

I RECOMMEND that the CFR:

ORDER that the Respondent violated § 11-615(a)(5) of the Financial Institutions Article;

and

ORDER that the Respondent's Mortgage Lending License be revoked; and

ORDER the Respondent to make restitution in the amount of \$13,515.00 to [REDACTED]

ORDER that the records and publications of the CFR reflect this decision.

July 9, 2009  
Date Decision Mailed

Eileen C. Sweeney  
Eileen C. Sweeney  
Administrative Law Judge

ECS/ecs  
#106630